

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON THE DATE INDICATED BELOW.



BY: 

Date: June 11, 2003

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**RECEIVED**

JUN 19 2003

TECH CENTER 1600/2900

In Re Patent Application of:  
CESARE PESCHLE

Conf. No.: 3808

: Group Art Unit: 1644

Appln. No.: 10/007,574

: Examiner: Michail A. Belyavskyi

Filing Date: November 9, 2001

: Attorney Docket No.: 9855-26U3

Title: Compositions and Methods for Generating Differentiated Human Cells

**RESPONSE TO RESTRICTION REQUIREMENT**

This Response to Restriction Requirement is provided in response to the Office Action (Paper No. 7) mailed February 11, 2003 in which the Examiner imposed a restriction requirement and required a species election. This Response is timely filed on June 11, 2003, in view of the Petition for a three month Extension of Time up to and including June 11, 2003.

Claims 1-18, 32, 46, 50, and 54 are pending.

**I. Restriction Requirements**

In Paper No. 7, the Examiner has imposed a restriction requirement among Groups I-IV as defined below:

Group I: claims 1-11, 13-17, and 46, drawn to a method of generating differentiated human cells, wherein a human stem cell is isolated using a KDR1 antibody, classified in Class 435, subclasses 325, 384; Class 530, subclass 387.1; Class 424, subclass 93.7;

Group II: claims 1-11, 13-17, and 14, drawn to a method of generating a differentiated human cell wherein the human stem cell is isolated using KDR2 antibody,

classified in Class 435, subclasses 325, 384; Class 530, subclass 387.1; Class 424, subclass 93.7;

Group III: claims 1-9 and 12-17, drawn to a method of generating a differentiated human cell, wherein the human stem cell is isolated using conjugated vascular endothelial growth factor, classified in Class 435, subclass 325, and Class 530, subclass 350; and

Group IV: claims 18, 32, 50, and 54, drawn to a method of repairing a damaged human tissue and to a method of rejuvenating an aid-damaged human tissue, classified in Class 424, subclass 93.7, 577, Class 435, subclass 384.

In support of this restriction requirement, the Examiner argues merely that:

These inventions are different with respect to ingredients, method steps, and end point; therefore each method is patentably distinct. ... in addition, they have acquired a separate status in the art as shown by different classification and/or recognized divergent subject matter. Further, even though in some cases classification is shared, a different field of search would be required based upon the structurally distinct products recited and the various methods of use comprising distinct method steps. Moreover, a prior art search also requires a literature search. It is an undue burden for the Examiner to search more than one invention. Therefore, restriction for examination purposes as indicated is proper.

While the applicants do not necessarily agree with the Examiner, for purposes of facilitating the prosecution of this application, the applicants hereby elect Group I (claims 1-11, 13-17, and 46) for initial prosecution. The applicants reserve the right to prosecute the subject matter of the remaining claims in one or more divisional or continuation applications.

## **II. Species Election.**

In Paper No. 7, the Examiner has imposed several species restrictions with respect to Group I:

- (1) a specific tissue selected from the group recited in claim 6;
- (2) a specific differentiated mammalian cell selected from the group cited in claim 17; and
- (3) a specific tissue selected from one of the groups recited in claim 7, claim 8, or claim 9, depending on the tissue type elected above.

Accordingly, applicants make the following elections for initial prosecution:

(1) with respect to the specific tissue type from claim 6, applicants elect "post-natal tissue;"

(2) with respect to the type of mammalian cell recited in claim 17, applicants hereby elect "epithelial cell;" and

(3) with respect to the specific tissue selected from those recited in claim 9, applicants hereby elect, for initial prosecution, "cord blood."

Applicants make these elections without prejudice, and with the understanding that, upon allowance of the generic claim 1, the applicant will be entitled to consideration of the other claims to additional species which are written in dependent form or otherwise include all the limitations of the allowed generic claim.

Claims that read on the elected species are claims 1-6, 9-11, 14, 17, and 46.

Should the Examiner have any questions regarding the elections made by the applicant, the Examiner is respectfully requested to contact the undersigned at the telephone number stated below. Consideration and early examination of the claims are respectfully requested.

Respectfully submitted,

**CESARE PESCHLE**

11 June 2003  
(Date)

By:

Kristyne A. Bullock  
**KRISTYNE A. BULLOCK**

Registration No. 42,371

**AKIN GUMP STRAUSS HAUER & FELD LLP**

One Commerce Square

2005 Market Street, Suite 2200

Philadelphia, PA 19103-7013

Telephone: 215-965-1200

**Direct Dial: 215-965-1348**

Facsimile: 215-965-1210

E-Mail: [kbullock@akingump.com](mailto:kbullock@akingump.com)

KAB:cmb  
Enclosure  
235630